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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,398	08/24/2005	Gustav Dengel	LIP047	3153

7590 06/15/2009  
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EXAMINER
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WALKER, NED ANDREW

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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06/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/507,398	<b>Applicant(s)</b> DENGEL ET AL.	
	<b>Examiner</b> NED A. WALKER	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 5-9, 11, 13 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/24/05, 06/07/06</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The Applicant's response, filed April 17, 2009, to the Requirement for Election/Restriction comprised an election of Species 2: Figure 4 and the associated claims 1-5, 7, 10, 12, 14, and 15. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The Applicant's arguments, with respect to claim 1 being generic, have been fully considered and are persuasive. Therefore, the Examiner acknowledges that upon the allowance of the generic claim 1, the Applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

The Examiner, however, does disagree with the Applicant's alleged associated claims with Species 2: FIG. 4. Specifically, claim 5 recites "edge projection is provided with tongue 12". Tongue 12 is not in FIG. 4 and therefore is a feature mutually exclusive to other species. Claim 15 recites "a mark" which is not illustrated in the elected FIG. 4 and therefore is a feature mutually exclusive to other species. As a result, claim 5 and its dependent claim 7, and claim 15 are drawn to a non-elected species and do not comprise the associated claims for the elected Species 2: FIG. 4. The adjusted associated claims are claims 1-4, 10, 12, and 14.

The requirement is still deemed proper and is therefore made FINAL.

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2. Claims 5-9, 11, 13, and 15 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

3. The drawings were received on June 3<sup>rd</sup>, 2009. These drawings are acceptable.

### ***Specification***

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4, 10, 12, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "where the cover is detachably connected thereto and whereon at least one tongue-like element is connected ". This language is unclear and indefinite because it is not readily apparent what the objects are of these modifying phrases.

Claims 4 recites the limitation "recess". There is insufficient antecedent basis for this limitation in the claim.

Claims 2, 3, 10, 12, and 14 are rejected for incorporating the errors from their respective parent claim by dependency.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**8. Claims 1-4, 10, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Binder (EP 0565967).**

Binder discloses a container, especially a bucket or similar (1), comprising an opening, which is orientated upwards and which can be closed by a cover (6), and a peripheral container edge (16), which is drawn outwards in a downward direction on the container wall (FIGS. 4), where the cover is detachably connected thereto and whereon at least one tongue-like element (14) is connected in such a way that at least one part of the cover is raised due to a pivoting movement away from a starting position on the container wall, characterized in that tongue-like element engages container edge from behind (FIG. 5) with at least one part of the tongue-like element (15), said part of the tongue-like element can be guided outwards, in front of container edge, by the pivoting movement, and said part of the tongue-like element cannot be guided back behind container edge when tongue-like element is pivoted back towards the starting position (FIGS. 5-6); characterised in that said part of the tongue-like element is designed as an integral part of tongue-like element (FIGS. 5-6); characterised in that said part of the

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tongue-like element can be deformed or broken open during the pivoting movement of tongue-like element (FIGS. 5-6); characterised in that container edge displays, in the region of tongue-like element, downward-pointing edge projection (20) that engages recess (between 14 and 1) in tongue-like element (FIG. 5); characterised in that parts of the tongue-like element (two instances of 20 as shown in FIG. 2) are provided on the lateral ends of tongue-like element, which engage the respective lateral ends of container edge facing tongue-like element from behind (FIGS. 2, 3, 5); characterised in that the downward-facing edge side of tongue-like element stands back relative to the lower end of container edge drawn downwards on container wall (FIGS. 2, 3, 5); characterised in that the side of tongue-like element facing away from container wall displays a textured surface (FIGS. 2, 3, 5).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781

NW